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07-21-06
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In the Matter of the Application of
California American Water Company
(U 210 W) for a Certificate of Public
Convenience and Necessity to Construct
and Operate its Coastal Water Project to
Resolve the Long-Term Water Supply
Deficit in its Monterey District and to
Recover All Present and Future Costs in
Connection There with in Rates

A.04-09-019

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES TO LIMIT THE
TESTIMONY CALIFORNIA AMERICAN WATER COMPANY CAN OFFER IN
PHASE I OF THIS PROCEEDING**

Pursuant to Rule 45 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Division of Ratepayer Advocates ("DRA") files this Motion seeking a ruling from Administrative Law Judge ("ALJ") Bertram Patrick limiting the testimony California American Water Company ("Cal Am") can offer as evidence during Phase I of this proceeding. As discussed below, Cal Am has informed DRA that it intends to sponsor certain testimony in Phase I that is beyond the proper scope of Phase I and which should properly be deferred to the water supply solution phase ("Phase II") of this proceeding.

DRA has been focusing its time on the interim rate request and not on the water supply solution aspects of this case. It is both inappropriate and unfair to parties to allow Cal Am to submit testimony that goes beyond the rate recovery request during this phase of the hearings.

I. BACKGROUND

On September 20, 2004, Cal Am filed an application for a certificate of public convenience and necessity (“CPCN”) to construct and operate its coastal water project (“CWP”). Because the application did not contain a Proponent’s Environmental Assessment (“PEA”) or specify the exact project for which Cal Am was seeking a CPCN, the ALJ Division ordered (in two separate Rulings) Cal Am to suspend its efforts to comply with Rule 24 public notice requirements and suspended the due date for parties’ protests until 30 days after Cal Am filed its PEA.

On July 14, 2005, Cal Am filed an Amended Application. The purpose of the amendment was “to submit California American Water’s Proponent’s Environmental Assessment (“PEA”) for its Proposed Project . . . and provide an update to the information contained in the Application filed in September 2004.” (Amendment, p. 1.) Cal Am also filed a Motion seeking approval of four special requests for interim rate relief to recover costs associated with the CWP (hereinafter “Special Requests”) starting January 1, 2007.

On May 23, 2006, Administrative Law Judge Bertram Patrick and Assigned Commissioner, President Peevey, issued a scoping memo and ruling on the interim rate relief phase of this proceeding (“Ruling”). The Ruling states that ALJ Cooke had previously “determined that there should be two distinct phases to this proceeding: (1) selection of a water supply solution and (2) interim rate relief.” (Ruling, p. 2, emphasis added.) The Ruling stated that the first phase of the proceeding “will be limited to Cal-Am’s Motion for Interim Rate Relief.” (*Id.*)

II. TESTIMONY THAT CAL AM INTENDS TO OFFER INTO EVIDENCE IN PHASE I HEARINGS IS BEYOND THE SCOPE OF THIS PHASE OF THE PROCEEDING

Cal Am has provided DRA with significant testimony in this proceeding covering both the cost recovery and water supply solution aspects of this case. On July 17, 2006, DRA learned that Cal Am intended to offer much of this testimony as evidence during the interim rate relief phase of this proceeding.¹ (Attachment A)

¹ On July 12, 2006, counsel for DRA left a voicemail message with one of Cal Am’s counsel asking Cal
(continued on next page)

On July 21, 2006, Cal Am provided parties with edited versions of a number of Cal Am witnesses' testimony. Cal Am informed the parties that the testimony was being edited because the proposed project had changed over the course of the proceeding, the proposed rate relief had changed over the course of the proceeding, and because Cal Am had served testimony before the proceeding was bifurcated into two phases.

While DRA fully agrees that the proposed project and rate relief request has changed and the proceeding was bifurcated after Cal Am filed some of its testimony, providing this edited testimony just two working days before hearings is inappropriate. The proposed project changed back in July of 2005 and Cal Am knew the proceeding would be bifurcated at the prehearing conference held in October of 2005. Moreover Cal Am has filed additional testimony since that time in direct response to the ALJ's bifurcation of the proceeding and this additional testimony covered the interim rate relief phase.

However, the edited testimony still provides information not appropriate to the rate relief phase of the hearings. DRA files this motion seeking a ruling from the ALJ Patrick prohibiting Cal Am from offering the following testimony or any newly edited version of this testimony during Phase I of this proceeding:

September 20, 2004 Direct testimony of Fred Feizallohi and new edited version

July 14, 2005 Supplemental Direct testimony of Fred Feizallohi and new edited version

July 14, 2005 Direct testimony of Lawrence Gallery and new edited version

July 14, 2005 Direct testimony of Steven Leonard²

July 14, 2005 Supplemental Direct testimony of David Stephenson and new edited version

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Am to specify which testimony it planned to offer at hearings. DRA counsel received a partial listing on July 17, 2006 with a statement that Cal Am would provide DRA with a complete list by Wednesday July 19, 2006. (Attachment B). On July 21, 2006, two working day before hearings, Cal Am informed parties that it plans to offer edited versions of some of witnesses' testimony, and provided parties with new versions of this testimony. On July 21, 2006, Cal Am also notified parties that it would be providing corrected versions of many of the witnesses' testimonies.

² Cal Am's July 21, 2006 exhibit list does not contain Mr. Leonard's testimony. DRA includes his testimony here to assure it will not be offered.

Direct Testimony of Fred Feizallohi, P.E. (September 20, 2004) and the July 21, 2006 edited version - On page 5 of his direct testimony, Mr. Feizallohi states that the purpose of his testimony is “to discuss and support the project description and cost estimates in California American Water’s Project Application” (Application, Tab F, p. 5) Mr. Feizallohi’s direct testimony discusses the basis, methods, and assumptions used to develop the cost estimates for the initial Basic Coastal Water Project that was part of a larger Regional Coastal Water Project. (*Id.*, p. 6.).

Mr. Feizallohi’s direct testimony is not within the scope of this phase of the proceeding. Phase I is to address whether or not Cal Am should be permitted to start recovering costs of the CWP not what those costs might be. For example, on page 8 of Mr. Feizallohi’s testimony he states that electrical energy costs were computed at \$0.070/KWH and that a replacement cycle of seven years was assumed for reverse osmosis and pretreatment membrane. The reasonableness of these estimates is not relevant to stated purpose of Phase I of the proceeding which is whether Cal Am should be permitted to impose a surcharge on customers to begin collecting the costs of the CWP or other alternative water supply, not whether possible future construction costs are reasonable. The reasonableness of the cost estimates for the CWP or alternative project is part of the process for selecting the water supply solution that will occur in Phase II.

Moreover, the cost estimates provided in Mr. Feizallohi’s direct testimony were developed based on a Regional Coastal Water Project. (Application, Tab F, p. 6.) Cal Am’s Amended Application no longer proposes a Regional Coastal Water Project. (See Amended Application) While Cal Am apparently claims that the edited version was changed to address this fact, there is no explanation of how cost data for the Regional Project still contained in the edited version is appropriate for the stand alone plant.

Supplemental Direct Testimony of Fred Feizallohi, P.E. (July 14, 2005) and the July 21, 2006 edited version - On page 1 of his supplemental direct testimony, Mr. Feizallohi states that the purpose of his testimony is “to discuss and support the project management aspect of the CWP as well as to support the testimonies of other CWP team members relative to the facilities descriptions and cost estimates developed for the CWP” (Amended Application, Ex. C, pp. 1-2.) Mr. Feizallohi’s supplemental direct testimony describes the revised CWP and revised cost estimates. Like Mr. Feizallohi’s direct

testimony, this testimony is more appropriate for Phase II of this proceeding as it deals with project management and cost estimates for the CWP. This information is irrelevant to the instant proceeding and should not be admitted during Phase I.

Direct Testimony of Lawrence E. Gallery, P.E. (July 14, 2005) and the July 21, 2006 edited version - On page 2 of Mr. Gallery's direct testimony he states that the purpose of his testimony is:

To demonstrate how the Coastal Water Project application for a Certificate of Public Conveyance and Necessity, and in particular the Proponent's Environmental Assessment (PEA), complies with the requirements of the California Public Utilities Commission (CPUC), in particular Rule 17.1, on the preparation and submission of Environmental Impact Reports to adhere to the principles, objectives, definitions, criteria and procedures of the California Environmental Quality Act (CEQA) and its associated Guidelines for the preparation of Environmental Impact Reports (EIR). (Amended Application, Ex. B, p. 2.)

In the edited version of his testimony, Mr. Gallery now states that the purpose of his prior testimony is to describe the scope of the work done to support Cal Am's request to recover these costs. Mr. Gallery is employed by RBF Consulting and his testimony discusses the scope of RBF's engagement with Cal Am for the CWP. Mr. Gallery's direct testimony outlines the key components of the Proposed Project (See p. 23 of July 21, 2006 blacklined version of the edited testimony.) Mr. Gallery's testimony also includes a discussion of how Coastal Water Project costs were estimated. As discussed previously, the estimation process is not relevant to this phase of the proceeding. The purpose of Phase I is not to determine what the CWP or the alternative will cost but whether Cal Am can begin collecting costs associated with this or other water supply solutions. The reasonableness of cost estimates for the CWP is beyond the scope of this phase of the proceeding.

Direct Testimony of Steven Leonard (July 14, 2005) - On page 2 of Mr. Leonard's testimony he states that the purpose of his testimony "is to describe why the Proposed Project is necessary and to address California American Water's efforts to work with local Monterey governmental agencies toward the development of a regional water supply for the Monterey area." (Amended Application, Ex. D, p. 2.) Thus, similar to the

rest of the testimony discussed above, this testimony is not germane to any of the questions posed by Cal Am's request for interim rate relief. Mr. Leonard's testimony provides information about the water supply solution and not about interim rates. Specifically, Mr. Leonard discussion the history of the water supply problem in Monterey, the objectives of the proposed project, why the project was changed from a regional project to the proposed project, and Cal Am's efforts regarding a regional project. This testimony is beyond the scope of Phase I and should be deferred to Phase II of this proceeding.

Supplemental Direct testimony of David Stephenson (July 14, 2005) and the July 21, 2006 edited version – Mr. Stephenson's supplemental direct testimony discusses total capital cost estimates for the Coastal Water Project. (Amended Application, Ex. F, p. 2.) As discussed above, these cost estimates are not within the scope of this phase of the proceeding.³

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³ Mr. Stephenson's Supplemental Direct testimony also contains support for Cal Am's initial proposal to have four surcharges to recover construction and preconstruction costs for the Coastal Water Project which was amended with the filing of Mr. Stephenson's Further Supplemental Direct testimony on October 14, 2005. The edited version of Mr. Stephenson's testimony removes this discussion.

III. CONCLUSION

For the reasons stated above, DRA requests that the ALJ limit the testimony Cal Am can offer as evidence in Phase 1 of the proceeding to that supporting Cal Am's interim rate relief request. Specifically, ALJ Patrick should prohibiting Cal Am from offering the following testimony during Phase I:

September 20, 2004 Direct testimony of Fred Feizallohi and new edited version

July 14, 2005 Supplemental Direct testimony of Fred Feizallohi and new edited
version

July 14, 2005 Direct testimony of Lawrence Gallery and new edited version

July 14, 2005 Direct testimony of Steven Leonard

July 14, 2005 Supplemental Direct testimony of David Stephenson and new edited
version

Respectfully submitted,

/s/ MONICA MCCRARY

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Advocates

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July 21, 2006

ATTACHMENT A

From: Dolqueist, Lori Anne [mailto:LDolqueist@steefel.com]
Sent: Monday, July 17, 2006 3:09 PM
To: McCrary, Monica L.
Subject: Testimony

Monica,

I'm still working on the testimony that we will be submitting in the hearing. Right now, I can tell you that we will not be submitting Dave's direct testimony (filed with the application in 2004). We will probably only submit portions of his July 2005 testimony. We will likely submit all of his October 2005, April 2006 and July 2006 testimony.

We will be submitting all of Larry Gallery's testimony because it provides the cost data that supports Dave's proposals. We will be submitting all of Kevin Tilden's testimony and of course we will be submitting Paul Townsley's testimony. We're still reviewing Fred's early testimony and the Steve Leonard testimony.

By Wednesday morning we will be sending around an email for cross examination estimates to all parties and at the point we will indicate which testimony we will be submitting at the hearing. I'd like to provide the cross estimates to the ALJ by Friday morning.

Please call if you have any questions.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**;MOTION OF THE DIVISION OF RATEPAYER ADVOCATES TO LIMIT THE TESTIMONY CALIFORNIA AMERICAN WATER COMPANY CAN OFFER IN PHASE I OF THIS PROCEEDING TO COST RECOVERY TESTIMONY**” in **A.04-09-019** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **21st** day of **July, 2006** at San Francisco, California.

/s/ Joanne Lark
Joanne Lark

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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